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John R. Pivnichny IBM Corporation, N50/040-4 1701 North Street Endicott, NY 13760			ART UNIT 3622	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/761,121

Filing Date: January 16, 2001

Appellant(s): LEVINE, ROBYN R.

John R. Pivinchny
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 18, 2011 appealing from the Office action mailed October 25, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The application was previously appealed. An appeal Brief was filed on December 18, 2006. Examiner's rejection was affirmed on February 17, 2010.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 24-30 are rejected and pending.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except

for the grounds of rejection (if any) listed under the subheading “WITHDRAWN REJECTIONS.” New grounds of rejection (if any) are provided under the subheading “NEW GROUNDS OF REJECTION.”

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant’s brief.

(8) Evidence Relied Upon

6,101,486	ROBERTS et al.	8-2000
6,829,475	LEE et al.	12-2004
6,879,960	NASCENZI et al.	4-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts et al. U.S. Patent No. 6,101,486 in view of Lee et al. U.S. Patent No. 6,829,475.

Regarding claims 24 and 27, Roberts teaches an access device having connectivity to a supplier advertising computer and said access device (see col. 5 lines 25-40), said advertising computer executing instructions on a processor to provide a web site accessible by said user via said access device, that when executed: determines constraints for said access device (see col. 5 lines 25-40); retrieves a profiled past of said user; retrieves current actions of said user; creates a vision of core competencies of said supplier based on said access device, and said profiled past, and said lifestyle view data, and said current actions; develops an opportunity consistent with said vision by merging said vision of core competencies with said supplier's channel awareness (see col. 6 line 60 to col. 7 line 16); and delivers said opportunity to said user via said connectivity to said access device (see fig. 3&4, col. 4 lines 24 to col. 5 lines 40, col. 6 lines 12 to col. 7 line 46). Robert teaches delivering an opportunity to user by creating a vision of a supplier's core competencies based on constraints of said point of contact and profiled past and current action (personalized or customized information message) (see col. 6 line to col. 7 lines 10), consistent with the vision by merging together and optimizing said vision with the suppliers channel awareness (providing voice communication with the customer (see col. 5 line 25 to col. 6 line 11). Robert failed to teach that the access device having a location indication capability and wherein said location indication capability is a real time GPS receiver. Lee teaches GPS receiver 110 that continuously reports the vehicle's longitude, latitude and altitude, location indication and providing advertisements (col. 11 line 60 to col. 12 line 3). Lee teaches providing mapping services to the vehicle showing travel routes or locations of interest and coupled with the advertising database drivers can see map locations related to recent advertisements and get navigation guidance to these locations. For example, the driver could get directions to the nearest chain restaurant whose commercial just played offering a lunch special. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a location

enhanced advertisement or opportunity, as in Lee, in Robert's customized marketing message in order to provide the advantage taught by Lee. Robert's also failed to teach purchasing lifestyle view data from a firm. Official notice is taken that is old and well known to acquire user's profile (lifestyle view) from a third party, such as ISP. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to acquire (purchase) the information from a firm (thirdparty) since it can be time consuming for each business to collect, store and process the information and the business might not be expert in modeling the input data and might fail to apply sufficient resources to properly use the information. (for the official notice support, see Nascenti et al. US 6,879,960, col. 1 lines 20-57, col. 6 line 8 to col. 7 line 11).

Regarding claim 25, Roberts teaches the system of claim 24, wherein said access device is a cell phone, kiosk, personal digital assistant such as a palm top device, a laptop computer, a desktop computer, or a computer terminal (see col. 5 lines 25-40).

Regarding claim 26 Roberts teaches wherein said connectivity is a modem, digital modem, high speed lines, or wireless connection (see fig. 1 and col. 5 lines 25-40).

Regarding claim 28 Roberts teaches the profile past including demographic data (see col. 4 lines 33-67).

Regarding claims 29 and 30, Roberts teaches that said current actions includes transaction, wherein the transaction includes purchases or payment or returns (see col. 4 lines 33-44, col. 5 lines 1-24 and col. 6 line 36 to col. 7 line 9).

(10) Response to Argument

Appellant argues that "the data described by Nascenti is not specific for a particular user. Appellant further argues that there is no description or suggestion in Nascenti of Appellant's recited lifestyle view data and no description or suggestion in Nascenti of Appellant's lifestyle

view data for a specific user. Appellant also argues that the Examiner states that the statement on page 12, lines 3 - 9 of Appellant's Specification, "Various firms provide data for purchase which is grouped or keyed to presenting a lifestyle or lifestage view of users by block or group or some baseline parameter. The purchased data presents a view of the user based on aggregation of data points, such as, but not limited to geographic block, age of head of household, income level, number of children, education, ethnicity and buying patterns." describes this feature of retrieving purchased lifestyle view data specifically for a particular user. The Examiner has erred. The two sentences in quotes above are describing data for blocks or groups of users and aggregation of data. There is no description or suggestion in these two sentences that retrieving purchased lifestyle view data from a firm for a single particular user, rather than groups of users, was known prior to Appellants filing date. Nor does Lee describe this".

Claim 24 is a system claim comprising of an access device and an advertising computer with additional instructions on the processor that when executed **retrieve purchased lifestyle view data** for a user and create a vision ... based on said lifestyle view data ... Whether the retrieved data is a purchased data or not does not change the step of retrieving done by the processor, i.e., it does not change the functionality of the processor or the instructions. Second the claim recites retrieve ... lifestyle view for said user but does not recite if the purchased data was only for the specific user or was purchased as aggregation of data and from the aggregated data the lifestyle of the user was determined. The claim only recites retrieving a data for a user which happens to be purchased from a firm. In short it does not include a language that indicates how the data was purchased.

Third, Appellant's specification (see page 17) discloses as follows:

The profiled part of step 14 may also comprise retrieving purchased data whether or not a part of the demographic profile 26 or any other profile. Various firms provide data for

purchase which is grouped or keyed to presenting a lifestyle or lifestage view of users by block or group or some baseline parameter. **The purchased data presents a view of the user** based on aggregation of data points such as, but not limited to geographic block, age of head of household, income level, number of children, education, ethnicity, and buying patterns.

Appellant's specification teaches that purchased data from the firms indicate the lifestyle or lifestage view of a user.

Nascenzi also teaches, for example, PRIZM is a reliable and accurate lifestyle segmentation system updated regularly to contain the latest information. Nascenzi further teaches that PRIZM Cluster analysis begins with the U.S. Census database, which contains thousands of demographic data items from small neighborhood areas across the country...the PRIZM model is based on demographic and lifestyle factors that best define a neighborhood type and predict consumer behavior including social rank, mobility, urbanization, household composition, ethnicity and housing.

Appellant also argues that claim 24 requires creating a vision of core competencies of the supplier based on ... and the examiner cited Roberts Column 6 to column 7 line 10 but there is no description or suggestion anywhere within Roberts of creating a vision of core competencies much less one based on all four requirements of access device, profiled past, lifestyle view data and current actions.

During patent examination, the claims are given the broadest reasonable interpretation consistent with the specification. See *In re Morris*, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the

specification and drawings.”). Any special meaning assigned to a term “must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.” *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998).

Appellant did not provide the definition of “a vision of the supplier’s core competencies”. In regard’s to the language “vision of the supplier’s core competencies”, Appellant’s specification discloses as follows:

In one embodiment of the invention as shown in FIG. 3, **content is delivered by creating a vision of the supplier’s core competencies based on the user-centered perspective of point of contact 12, profiled past 14, and current actions 16**. Current promotional opportunities 32 are developed consistent with the vision by merging together and optimizing this user centered perspective with the supplier’s channel awareness whether voice-to-voice, V2V, or face-to-face, F2F, or fingertip device. Closed loop content delivery as explained above is possible by sensing and feeding back, via path 36, user response or actions to previous content delivery.

Given the broadest reasonable interpretation in light of the specification, a “vision” is an mental image or to have an idea of the supplier’s core competency (capability or ability) based on a) the access device, b) profiled past, c) lifestyle view data and d) current action. Therefore, by considering it all (a thru d), the “vision” is created and then the vision is used to develop opportunity, and the opportunity is then delivered. Robert also teaches delivering an opportunity (customized webpage which includes marketing information that relates to products or services offered) by considering the access device (user terminal, such as off-the-shelf computer, set-top box ...) (see col. 5 lines 25-40), profiled past (customer profile which includes demographic information and listing of services and products currently possessed by the customer) (see col. 4 lines 33-67, col. 6 lines 36-67) (*customer’s particular interests obtained form the profile information previously gathered*) and current action (which includes transactions) (see col. 5 lines 25-65, col. 7 lines 33-45).

Even though it was not part of the rejection, the Examiner would like to point out that Appellant's specifications does not disclose the advertising computer executing instructions or additional instructions on a processor to create a vision of the core competencies of said supplier.

The specification as indicated above only discloses "(i)n one embodiment of the invention as shown in FIG. 3, content is delivered by creating a vision of the supplier's core competencies based on the user-centered perspective of point of contact 12, profiled past 14, and current actions 16". Fig. 3 also does not show instruction when executed by a processor creates a "vision of core competencies of a supplier".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

YR
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